

AGREEMENT BETWEEN  
NAVAL SURFACE WARFARE CENTER PHILADELPHIA DIVISION  
AND  
ADVANCED TECHNOLOGY INTERNATIONAL  
Consortium Management Firm of  
THE MARITIME SUSTAINMENT TECHNOLOGY AND INNOVATION CONSORTIUM

Agreement No.: N64498-21-9-0001

Authority: 10 U.S.C. § 2371b: Authority of the Department of Defense to carry out certain prototype projects.

This Agreement is entered into between the Naval Surface Warfare Center, Philadelphia Division (NSWCPD) and Advanced Technology International (ATI), the Consortium Management Firm of the Maritime Sustainment Technology and Innovation Consortium (MSTIC) pursuant to and under U.S. Federal law.

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Sr. Vice President, Contracts and Procurement  
Advanced Technology International

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Date

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Agreements Officer  
Naval Surface Warfare Center, Philadelphia Division

\_\_\_\_\_  
Date

**Naval Surface Warfare Center Philadelphia Division  
Maritime Sustainment Technology and Innovation Other Transaction Agreement**

**TABLE OF CONTENTS**

<b>ARTICLE I: THE AGREEMENT.....</b>	<b>4</b>
1. Background.....	4
2. Agreement Duration.....	4
3. Appropriate Use of Other Transaction Authority.....	4
4. Definitions .....	4
5. Scope .....	6
6. Order of Precedence .....	9
<b>ARTICLE II: MANAGEMENT OF THE CONSORTIUM.....</b>	<b>9</b>
1. Consortium Administration.....	9
2. Roles and Responsibilities – Prototype Projects.....	9
3. Prototype Project Process .....	10
4. Pricing Arrangement for Prototype Projects.....	10
5. Fees.....	10
6. Status Reporting.....	10
7. Inspection and Acceptance .....	11
8. Shipping Provisions.....	11
9. Industry Days and Reviews .....	11
10. Modifications and Changes.....	12
11. Production Project Order .....	12
<b>ARTICLE III: MATTERS OF PERFORMANCE.....</b>	<b>12</b>
1. Stop Work.....	12
2. Termination.....	13
3. Limitation of Liability .....	13
4. Force Majeure .....	14
5. Disputes .....	14
<b>ARTICLE IV: AGREEMENT ADMINISTRATION .....</b>	<b>14</b>
<b>ARTICLE V: INTELLECTUAL PROPERTY .....</b>	<b>15</b>
1. Data Rights .....	15
2. Subject Inventions – Ownership and Licenses.....	22
3. Confidential Information .....	23

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

<b>ARTICLE VI: FINANCIAL AND ACCOUNTING.....</b>	<b>24</b>
1. Obligation .....	24
2. Accounting System Requirements .....	24
3. Allowable Costs .....	24
4. Incremental Funding.....	25
5. Cost Share.....	25
6. OT Execution Rate .....	25
7. Invoicing and Payments.....	25
<b>ARTICLE VII: GENERAL PROVISIONS .....</b>	<b>26</b>
1. Severability .....	26
2. Closeout Procedure.....	26
3. Retention and Access to Records for CMF and the Consortium.....	27
4. Comptroller General Access to Information.....	27
5. Title and Disposition of Property .....	28
6. Registration in the System for Award Management.....	29
7. Compliance with Laws Unique to Government Procurement.....	29
8. Disclosure of Information.....	29
9. Security Requirements.....	30
10. Safety.....	30
11. Environmental Requirements.....	30
12. Export Control.....	30
13. Civil Rights Act.....	31
14. Organizational Conflicts of Interest .....	31
15. Safeguarding Covered Defense Information and Cyber Incident Reporting .....	31
16. Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.....	31

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

**ARTICLE I: THE AGREEMENT**

**1. Background**

(a) The Naval Surface Warfare Center, Philadelphia Division (NSWCPD) and Advanced Technology International (ATI), enter into this Other Transaction (OT) Agreement under the authority of Section 815 of the Fiscal Year (FY) 2016 National Defense Authorization Act, codified in 10 U.S.C. § 2371b, Other Transaction Authority for Prototype Projects.

(b) ATI, a nonprofit corporation, shall organize, establish, and manage the Maritime Sustainment Technology and Innovation Consortium (MSTIC) as the Consortium Management Firm (CMF). MSTIC members represent traditional and non-traditional Defense Contractors, civil maritime, and academia. The members leverage their combined capability in research and development leading to development and maturation of prototype projects as identified in Article 1, Section 6, Scope. MSTIC provides an operating framework for its members to collaborate with the Government and each other to advance the development of new technological capabilities to the Warfighter pursuant to OT Authority.

**2. Agreement Duration**

(a) The Government may issue Prototype Projects from the date of this Agreement for three (3) years thereafter. Further, the Government reserves the right to extend this Agreement unilaterally for an additional three (3) year period followed by an additional four (4) year period. The total duration of this Agreement shall not exceed ten (10) years from the Agreement effective date. This is a (b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4) to be included with all payable milestones under each Prototype Project. There is no specified ceiling amount for this Agreement.

(b) Prototype Projects may be issued at any time during the term of this Agreement. Prototype Projects not completed within that period shall be completed by the Performer within the time specified in the Prototype Project Order.

**3. Appropriate Use of Other Transaction Authority**

(a) Prototype Projects executed under this Agreement must comply with 10 U.S.C. § 2371b, specifically, they must be directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the DoD, or the improvement of platforms, systems, components, or materials in use by the armed forces.

(b) Competitively awarded Prototype Projects may lead to a single award follow-on project for production efforts and may be executed under this Agreement in accordance with 10 U.S.C. § 2371b or any other allowable contracting method.

(c) Throughout the period of performance of any Prototype Project, the Agreements Officer (AO) and ATI will actively monitor all projects to ensure compliance with this statutory requirement. Failure to comply may result in termination of the Prototype Project and removal of the Performer from consideration for future Prototype Projects.

**4. Definitions**

*Agreement* means the body of this Agreement and its Attachments, which are expressly incorporated in and made a part of the Agreement.

*Agreements Officer* means an individual with authority to enter into, administer, or terminate this Agreement or any Prototype Project Order executed under this Agreement.

*Agreements Officer's Representative* means an individual designated and authorized in writing by the AO to perform specific technical or administrative functions on behalf of the Government. At the Government's discretion, multiple

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

AORs may be designated.

*Consortium* means the Maritime Sustainment Technology and Innovation Consortium (MSTIC) and is composed of traditional and non-traditional Contractors, as well as academia and non-profits that is legally bound to operate in accordance with a Consortium Membership Agreement.

*Consortium Management Firm (CMF)* is the organization acting on behalf of the MSTIC to execute and administer the efforts under this Other Transaction Agreement. The CMF is prohibited from performing prototype projects under this Agreement.

*Consortium Membership Agreement (CMA)* means the Agreement governing the rights and obligations of the Consortium member entities.

*Cost Sharing* means cash or in-kind resources expended during a prototype award by the Consortium Member or lower tier Subcontractors that are necessary and reasonable for accomplishment of the project.

*Development* means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of an existing or potential new technology, product, or service (or of an improvement in an existing technology, product, or service) for the purpose of meeting specific performance requirements or objectives. Development includes the research functions of design engineering, prototyping, and engineering testing.

*Expenditure-Based* means agreements where payments are exclusively or primarily based on amounts generated from the Performer's financial or cost records.

*Fixed-price OT* means Agreements where the primary method of payment is not based on amounts generated from the awardee's financial or cost records, including agreements where the price is fixed against established milestones and/or estimated level-of-effort.

*Non-traditional Defense Contractor* means an entity that is not currently performing and has not performed for at least the one-year period preceding the solicitation of sources by DoD for the procurement or transaction, any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. § 1502 and the regulations implementing such section 10 U.S.C. § 2302(9).

*Parties* means NSWCPD and ATI where collectively identified and *Party* where each entity is individually identified.

*Payable Milestone* means a milestone that has been met which then requires the Government to approve payment to ATI of the predetermined dollar amount associated with that milestone.

*Property* means any tangible personal property other than property actually consumed during the execution of work under this Agreement. For purposes of this Agreement, property does not include a deliverable prototype under any Prototype Project.

*Prototype* means a physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a technology, process, concept, end item, or system.

*Prototype Project* means any work that is performed in connection with this Agreement under the authority of 10 U.S.C. § 2371b.

*Prototype Project Order* means any individual OT Prototype Project issued to the Consortium in accordance with this Agreement.

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

*Sub-agreement* means any agreement or contract executed between a Consortium Member and another entity in performance of a Prototype Project.

*Subcontractor* means a business or person that enters into an agreement or contract to carry out work for another entity in performance of a Prototype Project.

## **5. Scope**

NSWCPD and ATI will collaborate on developing and executing coordinated Prototype Projects to enhance the NAVSEA mission effectiveness and mature technologies within the technology areas listed below. The intent is to ensure as new technological developments occur, sustainment projects will be able to achieve rapid access to state-of-the-art advancements. Prototype Projects awarded to ATI on behalf of the Consortium under this Agreement must comply with all the requirements of 10 U.S.C. § 2371b and are subject to the terms and conditions of this Agreement. Overall technology areas covered by this agreement include the following:

### **a) COTS Obsolescence and Tech Refresh Product Development**

Design, develop, prototype, and demonstrate COTS devices at the leading edge with commercial partners to address obsolescence and tech refresh that meet current future DoD needs at commercial cost and timelines and that improve the performance, reliability, or availability of shipboard systems. Eliminating the legacy supply chain risks and deliver a future proof technology without having to upgrade software systems. Tasking related to this project concept may include:

- Digital engineering technologies in support of reverse engineering and parts obsolescence
- Hardware Component design and development to create a form, fit functional replacement
- Data analysis and modeling to support business case analyses for parts sparing, procurements, life-of-type buys, and strategies on system obsolescence issues

### **b) Data Transformation**

Develop and demonstrate technologies and solutions to store, process, synthesize and operationalize sustainment data.

- Design and Development of Data Systems that store, process, and synthesize sustainment data.
- Associated ship installation drawing, development, and ship check for prototype installation onboard a maritime vessel.
- Associated prototype Technical data package development (Tech Manual, Preventive Maintenance Schedule (PMS), Allowable Parts List (APL)) to meet prototype shipboard installation requirements.
- Ship's force training package development for the prototype system.
- Rapid development of analytical models in support of maintenance and reliability studies, test site reliability engineering efforts, and prognostics for condition-based-maintenance.
- Development, demonstration, and exploitation of technologies, algorithms, and methods that expands the ability and/or improves predictive and prognostic maintenance decisions in support of condition based maintenance and availability decisions/planning in support of on time delivery of ships.
- Develop and demonstrate virtual prototype models to support the component, system, engagement, and mission level. Includes prototypes that allow the interconnection of hardware in the loop with computer models and/or the use of virtual and augmented reality, in support of In-service Engineering Agent (ISEA) of the Future.

### **c) Cyber**

- Development of additional cyber risk models to balance operational and cyber risks in planning and emergent situations.
- Prototype software and hardware assurance tools as well as security features and secure design environments.
- Develop cyber hardened COTS solutions to address system vulnerabilities and provide for compliance with security controls frameworks.

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

- Develop standards and practices to foster commercial development of secure, trusted, and assured parts and supply chains.
- Document and promulgate security-enhancing design practices across Government, Industry, and academia in the areas of standard program outreach material; standard training material; Government and Industry standards and best practices; and self-service libraries of standards and best practices.
- Document and promulgate DevOps and other Agile working practices across Government, Industry, and academia.
- Development of policies, software, and hardware technologies to support cyber security related incident response.

**d) Fleet Introduction Technologies**

- Develop new technology prototypes that can be implemented broadly to address warfighter needs. New technology prototypes may be hardware, virtual, process-based, or a combination of demonstrations (such as hardware in the loop computer models, rapid prototyping, or augmented reality distance support).
- Establish new technology qualification standards and approaches that reduce prototype development cycle time, reduce cost, and lower the risk of developing failing products.
- Perform testing of developed technologies and processes. Testing shall be done to gather information about final products/processes and their behaviors as early as possible. Testing may be done to support system validation, shipboard integration, environmental qualification, and other assessments as required.
- Develop and evaluate standardized business and technical practices for new Fleet technologies across Government, Industry, and academia. Standardized practices shall consist of engineering design practices, systems integration processes, specification and standards development methods, training and outreach material, general best practices guides, and self-service libraries.

**e) Waterfront Industrial Support Operations**

- Optimization of industrial waterfront process and process automation to enhance capabilities and improve efficiencies. Development of robust implementation techniques of these automations to operationalize critical system enhancements and improvements.
- Prototype system design, detailed design, technical package (Technical manual, preventive maintenance, and allowable parts list) and training package including Phase II Ship Change Document development, alterations, and prototype shipboard installation.
- Material procurement and installation services to support prototype installation for shipboard test and evaluation purposes.
- Research, design, development, and demonstration of Program Management tools to include cost, schedule and risk management with development of analytical tools for performance-to-plan metrics.
- Development of Quality Assurance process prototypes that increase efficiency and reduce cost to the customer.
- Develop improvements/innovations in methods, materials, and procedures for installing prototype equipment onboard maritime vessels or test sites.

**f) Asset Fabrication, Revitalization (Remanufacturing) and Packaging Innovations**

- Develop new and innovative asset fabrication, revitalization, and packaging methods for systems down to the Line Replaceable Unit (LRU) level.
- New fabrication methods may target any phase of fabrication innovation from concept development through material/hardware implementation. New fabrication methods shall demonstrate advancements that reduce cost or process time, increase component quality, and de-risk obsolescence. Fabrication methods can be physical and/or abstract (process) improvements.
- New machinery systems revitalization (remanufacturing) methods may address system/component handling and marking, inspection techniques, test methods, cleaning and sanitizing, restoration of components to their original condition, upgrades, storage improvements, material recycling, and disposal. Revitalization methods shall not be limited to component functionality. They may target component cosmetics, operator usability and comfort, or

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

remanufacturing process improvements.

- New packaging methods shall demonstrate improvements in component marking and labeling, handling, extended preservation, non-destructive inspection methods, bulk packaging automation, and environmental impact reductions. Improvements of security and traceability of packaged goods in the supply chain shall also be demonstrated. Packaging methods may consider any packaging medium such as glass packaging, wood packaging, anti-corrosive packaging, pharma packaging, plastics packaging and any other means of flexible packaging. Methods to utilize zero-waste packaging shall be evaluated whenever possible.

**g) Logistic and Supply Chain Management**

- Research, develop, and demonstrate component and part-centric supply chain management processes and tools that would provide for more informed decision making on the selection of components for system design.
- Design and develop a Logistics Data Model that has the capability to analyze and integrate existing and future logistics products.
- System Supportability and Sustainability Logistics

**h) Research and Development**

Work with Government, academia, and Industry to identify and evaluate innovative technologies through the development and test of prototype equipment that improves system functionality, supports future mission capabilities, and improves maintainability, sustainability, operability, and safety. The interest areas of equipment R&D include, but are not limited to the following R&D Technology Areas:

- Cybersecurity
- Controls
- Networked Communications
- Encryption
- Neural Network/Machine Learning
- Artificial Intelligence
- Virtual Reality
- AC Power Generation
- Fault Protection
- Power Distribution
- Power Conversion
- Harmonic Filtering
- EMI Hardening & Filtering
- Conductors
- Power System Modeling & Simulation
- MVDC Components and systems
- Motors
- Motor Controllers
- Energy Storage (batteries, capacitors)
- Electric Actuators
- Shaft Seals
- Air Handling (Fans, blowers, dampers, ducting, etc.)
- Pumps
- Reverse Osmosis
- Breathing Air Purification
- Air Conditioning & Refrigeration
- Gas Turbines
- Fuel Cells



**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

- High Temperature Superconductivity
- 3D Printing/Additive Manufacturing
- Laser Scanning
- Parametric Scaling Software & Tools

**6. Order of Precedence**

The order of precedence is as follows:

- (1) Prototype Project Orders executed under this Agreement
- (2) Any attachments to individual Prototype Project Orders executed under this Agreement
- (3) This Agreement
- (4) Any attachments to this Agreement

**ARTICLE II: MANAGEMENT OF THE CONSORTIUM**

**1. Consortium Administration**

(a) NSWCPD and ATI are bound to each other by a duty of good faith and best effort to achieve the objectives of this Agreement. This Agreement is not intended to be, nor shall it be construed as, by implication or otherwise, a partnership, a corporation, or other business organization.

(b) ATI shall establish a Consortium Management Agreement (CMA) and operate the MSTIC in accordance with its terms and conditions. ATI will act on behalf of the MSTIC in executing this Agreement, Prototype Projects issued under this Agreement, and any future modifications. All transactions between the Government and the MSTIC will be made via ATI.

(c) ATI shall be responsible for the overall day-to-day management of the MSTIC, including reporting, financial, and administrative matters, and the overall coordination and management of Prototype Projects as established under this Agreement.

(d) If changes are made to the CMA that substantially alter the relationship of the MSTIC (e.g., any restriction of access to prospective prototype project participants (either current or prospective consortium members)), ATI shall notify the Agreements Officer.

**2. Roles and Responsibilities – Prototype Projects**

*NSWCPD Responsibilities:* NSWCPD may issue Broad Consortium Announcements, Requests for White Papers, or Requests for Prototype Projects to the Consortium, through ATI, for the solicitation of Prototype Projects under this Agreement. NSWCPD is responsible for evaluation and selection of project proposals submitted by the Consortium. Unless otherwise specified, NSWCPD is responsible for providing project funding and managing the technical work performed under each Prototype Project.

*ATI Responsibilities:* As the CMF of the MSTIC, ATI shall provide training, as required, to facilitate its use of this acquisition instrument. ATI shall provide administrative support to NSWCPD in the refinement of Prototype Project requirements. ATI shall be responsible for the dissemination of Broad Consortium Announcements, Requests for White Papers, and Requests for Prototype Projects to all Consortium Members. ATI shall facilitate collaboration amongst the Consortium Members, and assist in the preparation of Consortium Members' white papers and proposals, including compliance reviews. ATI shall perform an analysis of any pricing submitted for all white papers and proposals. ATI shall

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

provide necessary administrative support throughout performance of the Prototype Projects, including assistance with Performer invoicing and payment, tracking of deliverables, managing the disposition of Government Property, coordinating Public Release of Information, and facilitating Prototype Project closeout. ATI shall maintain an interactive on-line platform for managing the project solicitation process and the White Paper Library. ATI shall host an annual MSTIC Industry Day to foster collaboration between the Government and the Consortium. In addition, ATI shall host project-specific Industry Days, as required by NSWCPD.

**3. Prototype Project Process**

The process for identifying, evaluating, selecting, and awarding individual Prototype Projects is as follows, however, NSWCPD reserves the right to deviate from the process outlined below:

(a) The Government will seek Prototype Projects by requesting issuance of a Request for White Papers or a Request for Prototype Projects (RPP) to ATI. Each request will identify mission needs and overall prototype objectives. ATI shall publicize the request to the MSTIC as well as other industry sources as necessary to seek maximum participation. Publication shall be made to the broadest audience practicable based on the requested technology area(s). Specific instructions for responding will be included in the request itself.

(b) ATI shall assist the MSTIC member(s) in all administrative aspects of preparation and submission of white papers and or proposals in response to the Government's request, including but not limited to, training, documentation, and other requirements as necessary to allow for maximum participation. NSWCPD will perform an evaluation based on the criteria set forth in the individual Request for White Papers or RPP. NSWCPD may request additional information or updates based on this evaluation. These submissions may be written, oral, or both, as specified in each individual request.

(c) ATI will perform a detailed price analysis of the submitted white paper(s) and or proposal(s) and provide the results to the NSWCPD AO. The NSWCPD AO is responsible for final determination whether the potential Performer's total evaluated price is fair and reasonable. NSWCPD reserves the right to request any additional information necessary in order to make this determination.

(d) One, multiple, or no awards may be made for Prototype Projects based on these evaluations. In no way does selection of a white paper guarantee award of the related Prototype Project.

(e) The Government reserves to the right to keep submissions for each prototype requirement for up to 36 months after submission of the proposal. These proposals may be funded at any time during the 36-month period after the Government has reconfirmed validity of the proposal.

**4. Pricing Arrangement for Prototype Projects**

Depending on the nature of each project, Prototype Projects awarded under this Agreement may be awarded as fixed price or expenditure based.

**5. Fees**

ATIs administrative and management rate as the CMF is addressed in Article VI, Paragraph 6. Any fee or profit proposed by a potential Performer in response to a Request for White Papers or RPP will be addressed separately as part of the negotiation with NSWCPD prior to selection and award of a Prototype Project.

**6. Status Reporting**

(a) ATI shall provide a quarterly status report on all performers executing Prototype Projects issued under this Agreement.

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

Upon completion of a Prototype Project, and in accordance with the individual Prototype Project, a final report shall be submitted by the Performer to include a recap of the project. At the discretion of NSWCPD, this final report may be used for public release purposes.

(b) ATI shall provide to NSWCPD an annual review of the overall performance of all individual prototype projects executed under this Agreement. The review shall consist of a brief status report of the performance of each individual prototype project in that given year, as well as the aggregate performance under this agreement, including a percentage of projects on schedule and within budget and those that have deviated from planned schedule and cost.

**7. Inspection and Acceptance**

(a) NSWCPD has the right to inspect and test all materials furnished and services performed under this Agreement, to the extent practicable at all places and times, including during the period of performance, and in any event before acceptance. NSWCPD may also inspect the plant or plants of any Performer, e.g. Consortium Member, Project Performer, or sub-agreement holder. NSWCPD shall perform inspections and tests in a manner that will not unduly delay the work. Performer shall ensure that all reasonable facilities and assistance for the safe and convenient performance of these duties is provided.

(b) Unless otherwise specified in Prototype Projects, the Government will accept or reject materials or services as promptly as practicable after delivery.

(c) If materials or services are rejected and the Performer fails to proceed with reasonable promptness to perform required replacement or correction, NSWCPD may terminate the Prototype Project in accordance with Article III, Paragraph 2.

(d) This section applies in the same manner and to the same extent to the corrected or replacement materials or services as to materials and services originally delivered under the Prototype Project.

**8. Shipping Provisions**

(a) Specific shipping instructions will be included in individual prototype projects executed under this agreement.

(b) All deliveries shall be FOB Destination, unless otherwise stated in individual prototype projects.

(1) Risk of loss or damage to the supplies provided under Prototype Projects executed under this agreement shall remain with the Performer and shall pass to the Government upon delivery.

(c) Unless otherwise specified in individual Prototype Projects, all hardware shall be packaged in accordance with commercial best practice to ensure undamaged arrival at destination.

**9. Industry Days and Reviews**

(a) At least annually, ATI in coordination with the Government will organize a MSTIC Industry Day, a collaboration event designed to bring Government, academia, and Industry together around mission needs and potential solutions. The purpose of these Industry Days is to provide a platform for the Government to share its mission needs, and consortium members to share their state-of-the art technologies and technical solutions.

(b) The Government may elect to pursue additional specialized events that may include, but are not limited to, any engagements moderated or facilitated by subject matter experts.

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

**10. Modifications and Changes**

(a) Changes in the terms and conditions of this Agreement or any Prototype Project executed under this Agreement shall only be made by written agreement between ATI and NSWCPD.

(b) If the NSWCPD AO determines a modification to this OT Agreement is required, the AO will issue a request to ATI for the proposed modification. ATI shall provide the impact of implementing the proposed modification to the AO. ATI may also propose modifications to this OT Agreement and shall submit its request to the AO. If there is a disagreement about a proposed modification, the dispute resolution process in Article III, Paragraph 6 shall be followed.

(c) If the NSWCPD AO determines a modification to a Prototype Project is required, the AO will issue a request through ATI to the Performer for the proposed modification. ATI shall assist the Performer with determining cost, schedule and technical impacts of the proposed modification, as necessary. The Performer shall provide an updated project proposal, if necessary, to include the implementation of the modification. The Performer may also propose modifications to the Prototype Project. The Performer shall collaborate with ATI and the AOR to determine cost, schedule, and technical impacts to the Prototype Project. The Performer shall submit its request through ATI to the NSWCPD AO detailing the proposed modification. If there is a disagreement about a proposed modification, the dispute resolution process in Article III, Paragraph 6 shall be invoked.

**11. Production Project Order**

(a) A follow-on production contract may be awarded without the use of competitive procedures, if—  
i. Competitive procedures were used for the selection of the Prototype Project; and  
ii. The participants in the Prototype Project successfully completed the Prototype Project.”

(b) Successful completion for a specific capability may occur prior to the conclusion of the project to allow the Government to transition that aspect of the prototype project into production while other aspects of the prototype project have yet to be completed.

(c) Requirements of other potential follow-on activities could involve, though not limited to, continued development and baseline management, fielding, sustainment, training, further scaling of the solution, integration of future capabilities, or integration of the solution with other capabilities.

(d) Follow-on production decisions will be dependent on the specific project and will consider life cycle costs, sustainability, test and evaluation, intellectual property requirements, and the risks and benefits of using a traditional procurement contract or the OT Agreement.

**ARTICLE III: MATTERS OF PERFORMANCE**

**1. Stop Work**

The Government may at any time, as directed by the AO by written order to ATI, stop all or any part of work called for under this Agreement or any Prototype Project executed under this Agreement, for a period as determined at the time of issuance of such written order, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this Article. Upon receipt of the order, all effected parties shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the prescribed period as determined in the stop work, or within any extension of that period to which the parties shall have agreed, the AO shall either:

(a) Cancel the stop-work order; or

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

(b) Terminate the work in accordance with Article III, Paragraph 2.

If a stop work order issued under this clause is canceled, the affected parties shall resume work. The Government shall make an equitable adjustment in the delivery schedule or negotiated price, or both, and the Government's share of the Agreement shall be modified in writing, if—

(1) The stop-work order results in an increase in the time required for, or in the cost properly allocable to, the performance of any part of this Agreement; and

(2) The Performer asserts its right to the adjustment within 30 days after the end of the period of work stoppage.

## **2. Termination**

(a) The Government reserves the right to terminate this Agreement, or any Prototype Project executed under this Agreement, or any part hereof, at any time, for its sole convenience by issuance of a written notice from the AO to ATI. In the event of such termination, ATI shall direct the Performer to stop work thereunder and cause any and all of its suppliers and subcontractors to cease work, as directed by the AO. NSWCPD and ATI shall negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination, which may include non-cancelable commitments made prior to the termination. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to the Disputes clause of this Agreement.

(b) If the Government takes action in accordance with Paragraph 2(a), NSWCPD and ATI will negotiate in good faith an equitable reimbursement for work performed toward accomplishment of any task or tasks of the terminated portion of a Prototype Project. NSWCPD will be responsible for the Government's share of the obligations properly incurred by the Performer(s) prior to termination. Costs incurred by the Performer(s) during a suspension or after termination of a project are not allowable unless the AO expressly authorized them in the suspension or termination notice, or in a subsequent notice. Failure of the Parties to agree to an equitable adjustment shall be resolved pursuant to Disputes, Article III, Paragraph 2 in this Agreement.

(c) If a Consortium Member performing a Prototype Project fails to comply with the provisions of this Agreement or its Prototype Project, the AO may take one or more of the following actions:

- (1) Withhold payments until the breach is corrected
- (2) Disallow all or part of the cost, including the associated fee or profit, of the activity or action causing the breach
- (3) Terminate the Prototype Project in whole or in part for cause or default
- (4) Take any other legally available remedies
- (5) Report the termination to the systems of record for reporting terminations for cause or default.

## **3. Limitation of Liability**

(a) With regard to the activities undertaken pursuant to this Agreement, no Party shall make any claim against the other, employees of the other, the others' related entities (e.g., Contractors, Subcontractors), or employees of the others' related entities for any injury to, or death of, its own employees or employees of its related entities, or for damage to, or loss of its own property, or that of its related entities, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

(b) In no event, shall either Party be liable to each other for consequential, punitive, special, and incidental damages or other indirect damages, whether arising in contract (including warranty), tort (whether or not arising from the negligence of a Party), or otherwise, except to the extent such damages are caused by a Party's willful misconduct.

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

(c) Extension of Waiver of Liability. ATI agrees to extend the limitation of liability as set forth above to the Consortium or sub-agreement holders at any tier performing Prototype Projects under this Agreement by requiring them, by contract or otherwise, to agree to waive all claims against the Parties to this Agreement.

**4. Force Majeure**

No failure or omission by NSWCPD or ATI in the performance of any obligation of this Agreement or any failure or omission by a Performer of a Prototype Project executed under this agreement, shall be deemed a breach of this Agreement, or create any liability, if the failure or omission arises from a cause beyond the control of the Parties. This includes, but is not limited to: acts of God; acts of the Government in either its sovereign or contractual capacity; changes to any rules, regulations, or orders issued by any Governmental authority or by any officer, department, and agency or instrumentality thereof, unless affected by modification to the Agreement; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; riot; and invasion, provided that such failure or omission resulting from one of the above causes is cured as soon as is practicable.

**5. Disputes**

(a) The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Section. Any disagreement, claim or dispute between NSWCPD and ATI or the MSTIC concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Section.

(b) Whenever disputes arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual Agreement as soon as practicable. The Parties agree that the notification under subparagraph (c) of this section shall not be made earlier than thirty (30) days from when the dispute arose. In no event shall a dispute that arose more than one hundred and eighty (180) calendar days prior to the notification made under subparagraph (c) of this section constitute the basis for relief under this section unless the AO waives this requirement in writing.

(c) Failing resolution by mutual Agreement, the aggrieved Party shall notify the other Party in writing of the relevant facts, identifying unresolved issues, and specifying the clarification or remedy sought. The dispute will then be referred to the Chief of the Contracting Office for NSWCPD and an executive of ATI, who shall meet in good faith to resolve the dispute.

(d) If the above are not able to resolve the dispute within sixty (60) calendar days of the date the notice under subparagraph (c) is received, then either party may pursue Alternative Dispute Resolution (ADR) or other administrative or judicial remedies.

(e) Pending resolution of any such dispute by settlement or by final judgment, the Parties shall each proceed diligently with performance unless otherwise mutually agreed, or the Agreements Officer directs, in writing, to stop performance.

**ARTICLE IV: AGREEMENT ADMINISTRATION**

Any approvals, modifications, updates or any other changes effecting the terms of this Agreement may be made only by the NSWCPD AO. Administrative and contractual matters under this Agreement shall be referred to the following representatives of the Parties:

NSWCPD: (b)(6)(b)(6)(b)(6), Agreements Officer  
Naval Surface Warfare Center, Philadelphia Division  
5001 South Broad Street  
Philadelphia, PA 19112-1403

**Naval Surface Warfare Center Philadelphia Division  
Maritime Sustainment Technology and Innovation Other Transaction Agreement**

Phone: 215-528-0914

Email: [Alicia.McPeters@navy.mil](mailto:Alicia.McPeters@navy.mil)

ATI: (b)(6)(b)(6), Sr. Vice President, Contracts and Procurement  
315 Sigma Drive  
Summerville, SC 29486  
(b)(6)(b)(6)(b)(6)  
(b)(6)(b)(6)(b)(6)

Technical and Programmatic Matters under this Agreement shall be referred to the following representatives:

NSWCPD: (b)(6)(b)(6), Other Transaction Program Manager  
Naval Surface Warfare Center, Philadelphia Division  
5001 South Broad Street  
Philadelphia, PA 19112-1403  
(b)(6)(b)(6)  
(b)(6)(b)(6)(b)(6)(b)(6)

ATI: (b)(6)(b)(6), Program Manager  
315 Sigma Drive  
Summerville, SC 29486  
(b)(6)(b)(6)(b)(6)  
(b)(6)(b)(6)(b)(6)

Any changes to the above named individuals will be made by modification to this Agreement in accordance with the Article II, Paragraph 10, Modifications and Changes.

The Government may designate an AOR for each Prototype Project issued under this Agreement. The designation will be included in each Prototype Project, and will include the extent of the AOR's authority to act on behalf of the AO. The AOR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the Prototype Project.

## **ARTICLE V: INTELLECTUAL PROPERTY**

### **1. Data Rights**

As appropriate, replace "contractor" with "Consortium Member" or "MSTIC Member" and "contract" with "Agreement" or "Prototype Project".

#### *(a) Definitions*

*Background Invention* means any invention made by a Consortium Member(s) or Prototype Project Performer(s) prior to performance or outside of the Scope of Work of a Prototype Project.

*Commercial computer software* means software developed or regularly used for non-governmental purposes which (i) has been sold, leased, or licensed to the public; (ii) has been offered for sale, lease, or license to the public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or (iv) satisfies (i), (ii), or (iii) above and would require only minor modification to meet the requirements of this Agreement.

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

*Computer database* means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

*Computer program* means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

*Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

*Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

*Covered Government support contractor* means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor (i) is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and (ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at DFARS [252.227-7025](#).

*Detailed manufacturing or process data* means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

*Developed* means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code. "Developed" means that (i) a computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose; (ii) computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; and (iii) computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

*Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof. "Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense. "Developed with mixed funding" means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

*Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent



**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

necessary to permit identification of physically and functionally interchangeable items.

*Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

*Government purpose rights* means the rights to—

- (i) Use, modify, reproduce, release, perform, display, or disclose technical data, computer software, or computer software documentation within the Government without restriction; and
- (ii) Release or disclose technical data, computer software, or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

*Invention* means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code.

*Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if it is necessary for emergency repair and overhaul; or if the release or disclosure is to a covered Government support contractor in performance of its covered Government support contract, or to a foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes. When such release outside the Government occurs, the recipient of the technical data shall be made subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and the Consortium Member asserting the restriction shall be notified thereof.

*Made* with respect to an invention means the conception or first actual reduction to practice of the invention.

*Minor modification* means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

*Noncommercial computer software* means software that does not qualify as commercial computer software.

*Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; under such conditions as to establish that the invention is being utilized, and the benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

*Restricted rights* apply only to noncommercial computer software and mean the Government's rights to—

- (i) Use a computer program with one computer at one time, unless otherwise agreed;
- (ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;
- (iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;
- (iv) Modify computer software provided that the Government may use the modified software only as provided in

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

paragraphs (i) and (iii) of this clause, and not release or disclose the modified software except as provided in paragraphs (ii), (v), (vi) and (vii) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party that has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at [227.7103-7](#) of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the use and non-disclosure agreement at DFARS [227.7103-7](#) or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)(15)(i) through (iv) of this clause.

*Subject invention* means any invention of a Performer made in the performance of a Project pursuant to this Agreement.

*Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

*Unlimited rights* means rights to use, modify, reproduce, perform, display, release, or disclose technical data, computer software, or computer software documentation, in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) Rights in data. The Performer grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data, computer software, and computer software documentation:

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

(1) The Government shall have Government Purpose Rights (GPR) in technical data developed under this Agreement, unless otherwise specified in this Article or in the Prototype Project Orders. The Government shall have Unlimited Rights in: (i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds; (ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance; (iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes; (iv) Form, fit, and function data; (v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data); (vi) Corrections or changes to technical data furnished to the Contractor by the Government; (vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party; (viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or (ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with Government purpose license rights or limited rights and the restrictive condition(s) has/have expired, or Government purpose rights, and the Performer's exclusive right to use such data for commercial purposes has expired.

(2) The Government shall have Government Purpose Rights for Computer Software developed under this Agreement unless otherwise specified in the Article or in the Prototype Project Orders. The Government shall have Unlimited rights in: (i) Computer software developed exclusively with Government funds; (ii) Computer software documentation required to be delivered under this contract; (iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government; (iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party; (v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or (vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or Government purpose rights, and the Performer's exclusive right to use such software or documentation for commercial purposes has expired.

(3) The Government shall have Government purpose rights for a five-year period, or such other period as may be negotiated, in computer software developed with mixed funding, and in technical data that (A) pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights, or (B) was created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes. The five-year period, or such other period as may have been negotiated, shall commence upon the Project Order. Upon expiration of the five-year or other negotiated period, the Government shall have Unlimited rights in the technical data and computer software. The Government shall not release or disclose technical data or computer software in which it has government purpose rights unless (A) prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at DFARS [227.7103-7](#); or (B) the recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The Performer has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the government purpose rights five year (or other negotiated) time period.

(4) Limited rights.

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

(i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data—

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

(iv) The Contractor acknowledges that—

(A) Limited rights data are authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause at [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(5) Restricted rights.

(i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights.

However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(iii) The Contractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such software, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

contractor's use of the restricted rights software as set forth in the clause at [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

(6) Specifically negotiated license rights. The license rights granted to the Government under this Article may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than Limited Rights or Restricted Rights. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(7) Prior government rights. Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless the parties have agreed otherwise, or any restrictions on the Government's rights have expired or no longer apply.

(8) Release from liability. The Performer agrees to release the Government from liability for any release or disclosure of technical data made in accordance with this Article.

(c) All rights not granted to the Government are retained by the Performer.

(d) The Performer shall not, without the written approval of the AO, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Performer is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) Proposals submitted in response to a Request for White Paper or RPP shall identify the technical data or computer software that the Consortium Members, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with other than Unlimited rights. Technical data and computer software that a Performer asserts should be furnished to the Government with restrictions on use, release, or disclosure shall be identified in an attachment to the white paper or Project Order. If a Project Order is awarded, the assertions identified in the proposal shall be listed as an attachment to the Project Order. The Performer shall not deliver any data with restrictive markings unless the data are listed on such attachment. In addition to the assertions made in the attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the AO as soon as practicable prior to the scheduled date for delivery of the data. Performers making a data rights assertion shall list in the attachment the technical data or computer software to be furnished with restrictions, the basis for assertion, and the asserted rights category.

(f) The Performer may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software to be delivered by marking the deliverable data subject to restriction in accordance with this Article as covered by Government purpose rights, Limited rights, or Restricted rights. The Government shall have Unlimited rights in all unmarked Data. A Performer that will deliver technical data or computer software with other than unlimited rights, shall have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized; and maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under this contract.

(g) The Government may ignore or, at the Performer's expense, correct, or strike a marking if, in accordance with this Article, a restrictive marking is determined to be unjustified. If the AO notifies the Performer of a nonconforming marking and the Performer fails to remove or correct such marking within sixty (60) days, the Government may ignore or,

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

at the Performer's expense, remove or correct any nonconforming marking.

(h) The Government has rights in certain Designations, including the mark "MSTIC" and others, which may arise during the course of performance of this Agreement. For purposes of this Agreement Designation also means internet domain names, website registrations, and logos associated with the Consortium Management Firm's activities under this Agreement. ATI shall not seek to register the Designations as trademarks in any jurisdiction, and they shall not assert any claim, in any jurisdiction, including but not limited to trademark infringement, based on rights they believe they have in such Designations against the Government or others authorized by the Government to use the Designations. The Government is providing the Designations to ATI and the Consortium Members for use in connection with the activities relating to this Agreement. Notwithstanding the foregoing ATI may use any Designation to promote its role and experience as a Consortium Manager, and Members may use any Designation to promote their role and experience in performing under this Agreement. ATI shall not use the Designations for any other purpose without the prior written permission of the AO. ATI acknowledges that these obligations with respect to the Designations shall survive the expiration, completion, closeout, or termination of this contract.

## **2. Subject Inventions – Ownership and Licenses**

(a) The Performer shall disclose each Subject invention to the AO on a DD882 form within 6 months after the Performer first becomes aware that a Subject invention has been made. The disclosure shall contain sufficient technical detail to convey a clear understanding of the invention, and describe any publication or submission for publication, sale, offer for sale, or public use of the invention.

(b) The Performer shall elect in writing whether or not to retain ownership of any Subject invention by notifying the AO within 6 months of the disclosure as to those countries (including the United States) in which the Performer will retain ownership. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Government may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period. The Performer shall file either a provisional or a nonprovisional patent application on such an elected Subject invention within 1 year after election, provided that in all cases the application shall be filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use; file a nonprovisional application within 10 months of the filing of any provisional application; and file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order. The Performer shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a Subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by the United States Navy. The Government has certain rights in this invention." The Performer may request extensions of time for disclosure, election, or filing under this paragraph, and the AO will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests

(c) If the Performer elects to retain ownership of a Subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, the Subject invention throughout the world. The Performer acknowledges that, with respect to any Subject invention in which it has retained ownership, the Government has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations in effect on the date of the Project award.

(d) The Performer shall assign to the Government, upon written request, title to any Subject invention for which the Performer (i) elects not to retain title; (ii) fails to elect to retain title within the time period set forth in paragraph (2); (iii) in any country fails to file a patent application within the time set forth in paragraph (2); and, in any country in which the



**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

Performer decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention. The Performer shall notify the AO of any decisions not to file a nonprovisional patent application, not to continue the prosecution of a patent application, not to pay maintenance fees, or not to defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(e) The Performer shall retain a nonexclusive royalty-free license throughout the world in each Subject invention to which the Government obtains title, unless the Performer fails to disclose the invention within the times specified in paragraph (2). The Performer's license (i) extends to any domestic subsidiaries and affiliates within the corporate structure of which the Performer is a part; (ii) includes the right to grant sublicenses to the extent the Performer was legally obligated to do so at the time of Project award; and (iii) is transferable only with the approval of the Government, except when transferred to the successor of that part of the Performer's business to which the invention pertains. NSWCPD may revoke or modify the Performer's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404 and agency licensing regulations. NSWCPD will not revoke the license in that field of use or the geographical areas in which the Performer has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. NSWCPD may revoke or modify the license in any foreign country to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country. Before revoking or modifying the license, NSWCPD will furnish the Performer a written notice of its intention to revoke or modify the license; and will allow the Performer 30 days after the notice to show cause why the license should not be revoked or modified. The Performer has the right to appeal, in accordance with 37 CFR Part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) The Performer shall execute or have executed and promptly deliver to NSWCPD all instruments necessary to establish or confirm the rights the Government has throughout the world in those Subject inventions in which the Performer elects to retain ownership; and assign title to NSWCPD when requested under paragraph (4) and execute all papers necessary to enable the Government to obtain patent protection for the Subject invention in any country. The Performer shall provide to the AO, for any Subject invention for which the Performer has retained ownership, information with respect to the filing of patent applications including: filing date; serial no.; a copy of the application; patent number; grant or issue date; and upon request an irrevocable power to inspect and make copies of any patent application file.

### **3. Confidential Information**

(a) "Confidential Information" includes information and materials of a disclosing party which are confidential, proprietary, or a Trade Secret as defined in the Uniform Trade Secrets Act §1.4. The disclosing party shall designate any such disclosure as Confidential Information upon disclosure to the receiving party. Materials and other information which are orally, visually, or electronically disclosed by a disclosing party, or are disclosed in writing without such a designation, shall constitute Confidential Information if the disclosing party, within thirty (30) days after such disclosure, delivers to the receiving party a written notice describing the material or information and indicating that it is Confidential Information, provided that any disclosure of information by the receiving party prior to receipt of such notice shall not constitute a breach by the receiving party of its obligations under this paragraph.

(b) Confidential Information shall remain the property of the disclosing party. Unless otherwise agreed to by the disclosing party, Confidential Information shall not be disclosed, divulged, or otherwise communicated by the receiving party to third parties, or used by the receiving party for any purposes other than in connection with specified Project efforts and the licenses granted in this Article. However, the duty to protect such Confidential Information shall not extend to materials or information that:

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

- (a) Are received or become available without restriction to the receiving party under a proper, separate agreement;
- (b) Are not designated “Confidential Information” in accordance with this Article;
- (c) Are lawfully in possession of the receiving party without restriction to the receiving party at the time of disclosure thereof as demonstrated by prior written records;
- (d) Are or later become part of the public domain through no fault of the receiving party;
- (e) Are received by the receiving party from a third party having no obligation of confidentiality to the disclosing party;
- (f) Are developed independently by the receiving party without use of the Confidential Information as evidenced by written records; or
- (g) Are required by law or regulation to be disclosed; provided, however, that the receiving party shall provide written notice to the disclosing party promptly to enable the disclosing party to seek a protective order or otherwise prevent disclosure of such information.

**ARTICLE VI: FINANCIAL AND ACCOUNTING**

**1. Obligation**

Each Prototype Project issued under this Agreement will include the associated funding. Funds obligated to a specific Prototype Project cannot be used for any purpose other than the expressly stated purpose of that specific Prototype Project.

**2. Accounting System Requirements**

- (a) ATI shall establish and maintain an accounting system that:
  - (1) Complies with Generally Accepted Accounting Principles;
  - (2) Controls and properly documents all cash receipts and disbursements under Prototype Projects;
  - (3) Allows for accurate and complete cost allocation and segregation by contract.
- (b) ATI and Performers awarded a Prototype Project under this Agreement shall maintain adequate records to account for the control and expenditure of Government funds received under this Agreement.

**3. Allowable Costs**

- (a) Federal funds and any Consortium Member's cost sharing funds are to be used only for costs that a reasonable and prudent person would incur in carrying out the Prototype Project.
- (b) No payments will be made for Prototype Projects issued on an expenditure basis under this Agreement unless it is confirmed that ATI has an accounting system that (1) is capable of identifying and segregating costs to the individual agreements and (2) provides for an equitable allocation of costs.
- (c) If a Consortium Member performing under a Prototype Project is subject to full Cost Accounting Standards on other agreements or contracts, then the allowable costs for Prototype Project executed under this agreement on a expenditure reimbursement basis are only allowable for reimbursement subject to the cost principles of Federal Acquisition Regulation (FAR) Part 31, Defense Federal Acquisition Regulation Supplement (DFARS) Part 231, and Navy and Marine Corps Acquisition Regulation Supplement (NMCARS) Part 5231, with all mention of Contractor understood to mean the Consortium Member and all mention of Contracting Officer understood to mean Agreements Officer.



# Naval Surface Warfare Center Philadelphia Division

# Maritime Sustainment Technology and Innovation Other Transaction Agreement

#### 4. Incremental Funding

- (a) The amount then allotted to the Prototype Project by the Government or;
- (b) If the Prototype Project involves cost-sharing, the amount then allotted by the Government to the Prototype Project plus the MSTIC member's corresponding share, until the AO notifies ATI in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to the Prototype Project.

## 5. Cost Share

- (a) In accordance with 10 USC 2371b, where it is determined that a cost share is required for an individual Prototype Project, at least one third of the total cost of the Prototype Project is to be paid out of funds provided by parties to the transaction other than the Federal Government. Each prototype proposed by a traditional Defense Contractor shall document the cost sharing proposed unless significant nontraditional participation is proposed
- (b) For Prototype Projects that require cost sharing, the non-Federal amounts counted towards the Consortium's contribution may not include costs that were incurred before the date on which the Prototype Project becomes effective. However, costs incurred for a prototype after the start of negotiations but prior to award of the subject Prototype Project, may be counted towards the non-Federal contribution if the AO determines the Consortium member incurred the costs in anticipation of entering into the Prototype Project and it was appropriate for the Consortium member to incur the costs prior to the Prototype Project award. The AO will not consider the cost of Government funded research, prior Independent Research and Development (IR&D), or indirect costs that are not allocable to the prototype project, as part of the cost sharing contribution.
- (c) For instances where the Traditional Defense Contractor believes a non-Traditional Defense Contractor is participating to a significant extent, the proposal shall include detailed explanation of the non-traditional Defense Contractors involvement as well as justification for their assertion that this involvement constitutes participating to a significant extent. The Government shall retain sole authority to determine if the non-traditional Defense Contractors involvement meets the statutory requirements.

## 6. OT Execution Rate

- (a) NSWCPD will compensate ATI [REDACTED] and NSWCPD may negotiate a lower, revised fixed execution rate at the onset of each option period. The execution rate [REDACTED].

## 7. Invoicing and Payments

- (a) ATI shall prepare requests for payment that include the applicable, negotiated payable milestones for each Prototype Project (b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4), in accordance with this clause and the terms of the individual Prototype Project. This request shall also include a reconciliation of any previous payments received and milestones completed, and be adjusted accordingly. ATI shall submit a copy of the request for payment to the AO or designee for approval.

# Naval Surface Warfare Center Philadelphia Division

(b) After approval, ATI shall submit invoices for processing according to the terms of the Prototype Project via the Wide Area Work Flow (WAWF) application of the Procurement Integrated Enterprise Environment (PIEE) system, according to the guidelines set forth below. Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(c) ATI shall maintain appropriate registrations in System for Award Management (SAM) and WAWF. (b)(6)(b)(6)

(d) The Government's liability to make payments to ATI is limited only to those funds allotted to individual Prototype Projects executed under this Agreement. The Government may incrementally fund projects in accordance with Article VI, Paragraph 4.

(e) Payments for fixed-price type Prototype Projects will be made in accordance with the negotiated Schedule of Payable Milestones for each Prototype Project via WAWF and the procedures of Article XI, Paragraph 7 of this agreement. Additional detailed instructions for payments may be included in individual Prototype Projects.

(f) **Cost Share Payments.** ATI shall notify the AO immediately if any Cost Share contribution from a Consortium Member is not made as required by the terms of a Prototype Project.

(g) ATI shall obtain approval from the designated AOR for each fixed price Prototype Project milestone payment prior to making payment to the MSTIC Member.

- (1) All schedules of Milestone Payments for individual fixed-price type Prototype Projects will include the applicable negotiated Line Items and Payable Milestones for each selected and funded prototype, (b)(4)(b)(4) (b)(4)(b)(4)(b)(4).
- (2) For fixed price type Prototype Projects, ATI shall only make payments to MSTIC Members based on the completed milestones of the Performer in accordance with the terms of the Prototype Project.
- (3) For expenditure reimbursement type Prototype Projects, ATI shall only make payments to MSTIC Members based on actual, allowable costs incurred.

(h) Any costs incurred prior to the execution of any Prototype Project will be the sole responsibility of the MSTIC Member and shall not be used as the basis of a claim against, or construed as an obligation of, the Government.

(i) Payment funds shall be maintained in an interest-bearing account prior to disbursement to the MSTIC Members. This account shall not be in U.S. Treasury Notes. Any interest earned shall be remitted annually to NSWC, Philadelphia Division, or designee. Interest payments shall be made payable to the U.S. Treasury.

(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)

(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4)(b)(4).

## ARTICLE VII: GENERAL PROVISIONS

## 1. Severability

If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said provision; provided that no such severability shall be effective if the result of such action materially changes the economic benefit of this Agreement to the Parties.

## 2. Closeout Procedure

When an individual Prototype Project is completed or terminated after the Performer has received funding, the following closeout procedures apply:

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

- (a) NSWCPD will make prompt payments to the ATI for Payable Milestones reached but not yet paid under the Prototype Project being closed out. This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d *et seq.*) relating to nondiscrimination in Federally assisted programs.
- (b) ATI shall immediately refund any balance of unencumbered funding that NSWCPD has paid and that is not authorized to be retained by ATI for payment of performance under a Prototype Project.
- (c) ATI shall provide to NSWCPD all required reports and ensure the Performer has submitted all reports as specified in the Prototype Project within thirty (30) calendar days of completion of a Prototype Project. NSWCPD may grant extensions, as required.
- (d) ATI and the Performer shall account for any property received from NSWCPD and shall request disposition instructions from the AO, if applicable. Refer to Article VII Paragraph 5.

**3. Retention and Access to Records for CMF and the Consortium**

(a) ATI and MSTIC Members shall retain and permit the Government access to financial records, supporting documents, statistical records, and all other records pertinent to Prototype Projects or this Agreement for a period not to exceed three (3) years after expiration of the term of each individual Prototype Projects awarded under this Agreement or final acceptance of the last prototype award delivered under individual Prototype Projects, whichever occurs later, unless one of the exceptions in (b) of this Section applies.

(b) Exceptions:

- i. If any litigation, claim, or audit starts before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- ii. Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.
- iii. When records are transferred to or maintained by the DoD Component that made the award, the 3-year retention requirement is not applicable to the Consortium or Consortium Member(s).

(c) If the information described in this section is maintained on a computer, ATI and MSTIC Member(s) shall retain the computer data on a reliable medium for the time period prescribed. ATI and MSTIC Member(s) may transfer computer data in machine-readable form from one reliable computer medium to another. ATI and MSTIC Member(s) computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. ATI and MSTIC Member(s) shall also maintain an audit trail describing the data transfer.

**4. Comptroller General Access to Information**

(a) In accordance with 10 U.S.C. § 2371b, this OT Agreement and each Prototype Project awarded under this Agreement that provides for payments in excess of \$5,000,000 shall provide for the Comptroller General, at the discretion of the Comptroller General, the right to examine the records of any party to the Agreement or any entity that participates in the performance of the Prototype Project.

This requirement shall not apply with respect to a party or entity, or a subordinate element of a party or entity that has not entered into any other agreement/contract that provides for audit access by a Government entity in the year prior to the date of the applicable Prototype Project.

(b) The right provided to the Comptroller General in a clause of an agreement under paragraph (a) is limited as provided in subparagraph (b) in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

agreements or transactions that were entered into under 10 U.S.C. § 2371b.

(c) The only records of a party, other entity, or subordinate element referred to in paragraph (a) that the Comptroller General may examine in the exercise of the right referred to in that paragraph, are records of the same type as the records that the Government has had the right to examine under the audit access sections of the previous agreements or transactions referred to in such paragraph that were entered into by that particular party, entity, or subordinate element.

(d) The Comptroller General may not examine records pursuant to a section included in a Prototype Project under paragraph (a) more than three years after the final payment is made by the United States under the Agreement.

**5. Title and Disposition of Property**

(a) Definitions

*Property*, as used in this Article, means any tangible personal property other than property consumed during the execution of work under this Agreement.

*Government-furnished property* means property in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification.

*Contractor-acquired property* means property acquired, fabricated, or otherwise provided by the contractor for performing a contract and to which the Government has title.

(a) The Government may provide Government Furnished Property (GFP) to facilitate performance of a Prototype Project. The Government will identify in the Request for White Papers and or RPPs whether GFP is anticipated to be provided. The GFP shall be utilized only for the performance of that individual Prototype Project order unless a specific exception is made in writing by the AO. MSTIC Members shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession.

(b) The Performer shall assume the risk of and be responsible for any loss or destruction of, or damage to, any GFP while in its possession or control, with the exception of reasonable wear and tear or reasonable and proper consumption. All property shall be returned at the end of the project in as good as condition as when received with the exception of said reasonable wear and tear or in accordance with the provisions of the project regarding its use. The MSTIC Member shall obtain explicit written authorization by the AO for any transfer or disposition of GFP.

(c) Title to any item of property valued at \$5,000 or less or property with a proposed value greater than \$5,000 that was included in the final proposal selected by the Government and that is acquired by a Consortium Member pursuant to performance under a Prototype Project shall remain with the Consortium Member upon acquisition with no further obligation of the Parties unless otherwise determined by the AO. If an item of property with an acquisition value greater than \$5,000 is required after issuance of an order, the Consortium Member shall obtain prior written approval, if not included in the final proposal selected by the Government, from the AO prior to acquisition. Title to this property shall remain with the Government unless the AO grants title to the Consortium Member prior to acquisition.

(d) Disposition of Property. At the completion of a Prototype Project and with written authorization from the AO, items of property with an acquisition value greater than \$5,000 shall be disposed of in the following manner:

- 1) Purchased by the Consortium Member at an agreed-upon price, the price to represent fair market value, with the proceeds of the sale being returned to NSWCPD; or

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

- 2) Transferred to a Government research facility with title and ownership being transferred to the Government; or
- 3) Any other NSWCPD approved disposition procedure.

(e) **Prototype Project Property Documentation Requirements.**

- a. Each Prototype Project awarded under this Agreement shall include the following as it pertains to both acquired property in excess of \$5,000 if not included in final proposal and Government furnished property:

- 1) A list of property to which the Government has or will obtain title;
- 2) What guarantees, if any, the Government makes regarding the property's suitability for its intended use, the condition in which the property should be returned, and any limitations on how or the time the property may be used.

(f) ATI, in conjunction with the Government, shall maintain a Master List of all GFP provided, transferred, and dispositioned throughout the life of this agreement.

**6. Registration in the System for Award Management**

ATI shall hold a current, valid registration in the System for Award Management (SAM) throughout the life of this Agreement.

**7. Compliance with Laws Unique to Government Procurement**

ATI agrees to comply with, and require each Consortium Member awarded a Prototype Project to comply with, 31 U.S.C. § 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. § 431 relating to officials not to benefit; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. § 4712 and 10 U.S.C. § 2409 relating to whistleblower protections; 41 U.S.C. chapter 21 relating to procurement integrity; and 22 U.S.C. Chapter 78 relating to Combating Trafficking in Persons.

**8. Disclosure of Information**

(a) ATI shall not release to anyone outside the MSTIC any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of any Prototype Project or any program related to a Prototype Project, unless—

- (1) The AO has given prior written approval;
- (2) The information is otherwise in the public domain before the date of release; or

(3) The information results from, or arises during the performance of, a project that involves no covered defense information and has been scoped and negotiated by the contracting activity with the Consortium Member awarded a Prototype Project and research performer and determined in writing by the AO to be fundamental research (which by definition cannot involve any covered defense information). Fundamental research is defined by the National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award, the Under Secretary of Defense (Acquisition, Technology, and Logistics) memoranda on Fundamental Research, dated May 24, 2010, and Contracted Fundamental Research, dated June 26, 2008 (available at DFARS PGI 204.4).

(b) Requests for approval under paragraph (a)(1) above shall identify the specific information to be released, the medium

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

to be used, and the purpose for the release. The Consortium Member shall submit a request for public release to the AO via the CMF at least 30 business days before the proposed date for release.

(c) MSTIC Members agree to include a similar requirement, including this paragraph (c), in each sub-agreement under any Prototype Project. Sub-agreement holders shall submit requests for authorization to release through the MSTIC Member to the AO via ATI.

**9. Security Requirements**

(a) In the event that a Prototype Project under this Agreement requires the MSTIC or any of its members to have access to, or generate, classified information, the Government will generate a Department of Defense Security Classification Specification (DD Form 254). Each Prototype Project involving classified or controlled information will have a separate DD 254, which will only be applicable to the specified prototype award.

(b) ATI agrees to insert terms that conform substantially to the language of this section in all Agreements for Prototype Projects executed under this Agreement that involve access to classified information.

**10. Safety**

(a) ATI and MSTIC Members shall adhere to all local, state, and federal rules and regulations required in order to maintain a safe and non-hazardous occupational environment throughout the duration of this Agreement.

(b) During the course of performance of a Prototype Project, report any major accident/incident (including fire) resulting in any one or more of the following:

1. Causing one or more fatalities or one or more disabling injuries;
2. Damage of Government property exceeding \$10,000;
3. Affecting program planning or production schedules;
4. Degrading the safety of equipment under agreement, such as personnel injury or property damage;
5. Identifying a potential hazard requiring corrective action.

**11. Environmental Requirements**

(a) ATI and members of the MSTIC shall comply with all Federal, State, and local environmental laws and regulations, Executive orders, treaties, and Agreements when executing Prototype Projects under this Agreement. ATI shall ensure the Performer of a Prototype Project awarded under this agreement has evaluated the environmental consequences and identified the specific types and amounts of hazardous waste that may be generated during the performance of a Prototype Project.

(b) Consortium Members shall give consideration to alternative materials and processes in order to eliminate, reduce, or minimize hazardous waste being generated.

(c) Consortium Members shall not use Class 1 Ozone Depleting Chemicals in executing Prototype Projects under this Agreement.

**12. Export Control**

(a) ATI and MSTIC Members shall comply with the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.).

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

(b) ATI and MSTIC Members shall include and enforce inclusion of Export Control requirements as indicated in this paragraph, suitably modified to identify the appropriate parties, in all sub-agreements, regardless of tier, for developmental prototype work.

**13. Civil Rights Act**

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d *et seq.*) relating to nondiscrimination in Federally assisted programs.

**14. Organizational Conflicts of Interest**

(a) ATI shall immediately report all potential conflicts of interest to the Government. All white papers and proposals will address potential conflicts of interest and any proposed mitigation. ATI agrees to include in all sub-agreements a section requiring MSTIC Members to report all potential or real Organizational Conflict of Interests to the ATI and NSWCPD.

(b) NSWCPD has the right to limit MSTIC Members' involvement under this Agreement or other action to mitigate Organizational Conflicts of Interest. In the event ATI believes that the OCI can be mitigated, ATI shall submit to the AO an OCI mitigation plan.

**15. Safeguarding Covered Defense Information and Cyber Incident Reporting**

The protection of Controlled Unclassified Information (CUI) while residing in nonfederal information systems and organizations is of paramount importance to federal agencies and can directly impact the ability of the federal government to successfully carry out its designated missions and business operations.

National Institute of Standards & Technology (NIST) Special Publication (SP) 800-171 provides federal agencies with recommended requirements for protecting the confidentiality of CUI: (i) when the CUI is resident in nonfederal information systems and organizations; (ii) when the information systems where the CUI resides are not used or operated by contractors of federal agencies or other organizations on behalf of those agencies; and (iii) where there are no specific safeguarding requirements for protecting the confidentiality of CUI prescribed by the authorizing law, regulation, or government-wide policy for the CUI category or subcategory listed in the CUI Registry. The requirements apply to all components of nonfederal information systems and organizations that process, store, or transmit CUI, or provide security protection for such components. The CUI requirements are intended for use by federal agencies in contractual vehicles or other agreements established between those agencies and nonfederal organizations.

The Department of Defense (DOD) utilizes 48 CFR 252.204-7012 to direct the safeguarding of information and reporting of cybersecurity incidents for the DOD. Therefore, the guidance and requirements of 48 CFR 252.204-7012 as prescribed by 48 CFR 204.7304(c) are incorporated into this Agreement and shall flow-down to all Project Orders for non-COTS items, with all mention of Contractor understood to mean both the CMF and any Consortium Member awarded a Prototype Project, and all mention of Contracting Officer understood to mean Agreements Officer. 48 CFR 252.204-7012 shall not apply to COTS items. Each Project Order will identify the information that requires safeguarding and dissemination control.

**16. Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment**

As appropriate, replace "Contractor" with "Consortium Member" or "MSTIC Member" and "contract" with "Agreement" or "Prototype Project".

(a) *Definitions.* As used in this clause—

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means—

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-
  - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
  - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of



**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

equipment, system, or service.

**(b) Prohibition.**

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

**(c) Exceptions.** This clause does not prohibit contractors from providing—

- (1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

**(d) Reporting requirement.**

- (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.
- (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause
  - (i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered

**Naval Surface Warfare Center Philadelphia Division**  
**Maritime Sustainment Technology and Innovation Other Transaction Agreement**

telecommunications equipment or services.

- (e) Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.